

exchange, including support systems designed to ensure universal service, state regulatory and social policies concerning rates and rate differentials in urban and rural areas, and interconnection and access arrangements.

Similarly, NYNEX points out that the Commission's PCS initiative is an action of "enormous magnitude" and impact on the domestic telecommunications infrastructure. Meeting customer's PCS expectations will require "network intelligence, interconnection of many carriers, common channel signalling capabilities and a significant exchange of information among carriers for customer location, call completion, billing and compensation purposes.^{54/}

The Commission and state regulators have enacted various mechanisms designed to assure the availability of affordable basic telephone service, and other "socially beneficial" pricing and access policies. To the extent that 2 GHz PCS systems can become fungible substitutes for basic exchange service, the Commission must consider whether similar funding and support mechanisms are still desirable and how they can be accommodated in PCS without imposing regulatory barriers to competition. Factors inhibiting

^{54/} Comments of NYNEX at p. 6. NYNEX argues for LEC eligibility for PCS licenses emphasizing the LECs' "unique capability and heritage" of developing mass markets and the ability of their existing networks to support ubiquitous wireless PCS infrastructure. It acknowledges that realization of the full capability of PCS will require interconnection of many carriers, yet its comments are silent on the Commission's proposed federally protected right of interconnection. NYNEX's arguments for LEC PCS eligibility are invalid unless it supports reasonable interconnection with LEC networks for all wireless communications providers on comparable rates, terms and conditions, as discussed below.

competition must be minimized if PCS is to generate the benefits it promises the public. These issues are fundamental to resolving the regulatory and market structure of this service.

VI. INTERCONNECTION AND CARRIER CLASSIFICATION

A. All Wireless Communications Providers Should Enjoy a Federally Protected Right to Interconnection With the PSTN

Fleet Call is pleased that nearly all commenters supported a federally protected right for PCS providers to interconnect with the PSTN. As discussed in Fleet Call's comments, the Commission should make clear that this would apply to all PCS providers, including cellular and SMR licensees on 800 and 900 MHz spectrum, as well as new 2 GHz PCS licensees.^{55/} The Commission should expressly confirm that all mobile communications carriers are entitled to obtain interconnection with the PSTN that is reasonable for their particular systems, and that is no less favorable than that offered by the LEC to any other service provider for comparable interconnection services. As a number of farsighted commenters realize, all communications providers will require interconnection with other communications systems and networks to provide the increasingly ubiquitous services consumers demand.^{56/}

Interconnection is a sensitive issue given the fact that the monopoly LEC in each market and one of the two cellular licensees

^{55/} Since, definitionally, the PCS "family" includes these existing wireless services, this should be a given.

^{56/} Comments of U S West at pp. 20-21; Comments of GTE at p.19.

in that market are often affiliates of the same Bell Operating Company. There is a real potential for using the local exchange bottleneck to inhibit, impede or attempt to thwart entry of wireless communications providers that may compete with either the cellular affiliate or the local exchange itself.^{57/} In addition, state regulators concerned with local wireline rates, universal service obligations and a dynamically changing industry, may not in some cases readily see the manifest public interest benefits of unfettered interconnection of communications systems on a reasonable, cost-based basis.

The Commission sought comment on whether it should preempt state and local regulation of the types of interconnection available to PCS licensees as well as the rates, terms and conditions of such interconnection. Fleet Call reaffirms its support for preemption of state and local regulation of the types of interconnection available to wireless service providers. This would assure that PCS and other mobile communications licensees obtain necessary interconnection on a non-discriminatory basis thereby facilitating initiation of authorized services.

Fleet Call agrees with the commenters stating that the Commission need not preempt state regulation of interconnection rates or terms and conditions at this time. Fleet Call is actively arranging interconnection for its ESMR systems and is gaining

^{57/} The Commission vigilantly must monitor the actions of LECs and BOCs to determine if they are using their bottleneck control to delay or impede development of competing mobile systems. A prima facie ground for prohibiting entry into PCS or any other business is the misuse of this bottleneck control.

empirical experience that will better illustrate the extent to which such preemption may be warranted, and the extent to which LECs may be denying reasonable interconnection services. As noted above, the Commission should be prepared to expeditiously take action if state or local regulation is applied to thwart, impede or not enforce the ability of wireless communications providers to initiate federally-authorized communications services.

B. Determination of a Single Regulatory Classification for All PCS Licenses is Premature

As discussed above, the PCS "family" is expected to include a number of very different services. It is possible that optimum development of certain PCS services would be facilitated by regulation as a common carrier, while others may be more appropriately classified and offered on a private carrier basis. NTIA notes that there is probably not a single most appropriate regulatory treatment for PCS since PCS providers will offer a wide variety of services with different characteristics. It states that,

"until it becomes clearer what sorts of services will be offered under the PCS rubric, it may be difficult for the Commission to decide upon the appropriate regulatory classification. Classification of PCS as private carriage has certain advantages on policy grounds. As a practical matter, we expect that some PCS offerings could appropriately be classified as private carriage, while other services would constitute common carriage. The Commission's goal in this proceeding should be to adopt a flexible regulatory framework that encourages the development of a wide variety of PCS-type services, while maintaining similar regulatory

treatment for providers that effectively compete in the same marketplace (emphasis added)."58/

Thus, at this early stage, it is premature to mandate a single regulatory status for all PCS operators and all potential services. Forcing PCS providers to accept a particular regulatory status given the nascent state of the industry at this time, would further evidence the folly of a "rush to judgment" in this proceeding and add to the "regulatory schizophrenia" evident in the proposed PCS rules and the Commission's objectives for its emerging technologies spectrum reallocation.

Fleet Call believes that the best way to create a truly flexible PCS regulatory structure is to permit PCS licensees to select, when awarded a license, whether to offer service under that license on a common carrier or private carrier basis. Fleet Call is gratified that other commenters see the wisdom of this approach.59/ It would provide licensees maximum flexibility to offer a particular service under whichever regulatory approach is most advantageous -- thereby promoting the widest range of services at the lowest costs.60/ This approach is most likely to carry forward the Commission's goals for the 2 GHz emerging technologies

58/ Comments of NTIA at pp. 33-34.

59/ Commenters supporting this approach include Associated PCS Company, Comcast, Ericsson Corporation, Metrocall of Delaware, Inc., Time Warner Telecommunications, the National Association of Business and Educational Radio, PerTel, Inc., Viacom International, Inc. and the Clear Creek Mutual Telephone Company, et. al.

60/ Fleet Call would not permit a licensee to offer both private and common carrier services on a single set of frequencies in a single market as inconsistent with Section 332 of the Act.

spectrum and provide the widest array of services to the public.

VII. CONCLUSION

Throughout this proceeding, Fleet Call has supported PCS rules, regulations and policies that would best ensure development of a diverse, competitive array of personal communications offerings based on newly emerging technologies. Providing spectrum for these services was the underlying objective and purpose of the Emerging Technologies Reallocation Order.


Fleet Call respectfully submits that the proposed rules would engender development of PCS as a "cellular clone" at the cost of these new personal communications technologies. The Commission should revise its PCS implementation proposals to create a market structure and licensing process that is consistent with and would promote its emerging technologies allocation objectives and the promise of a broadly-based "family" of new personal communications capabilities. This can be done by authorizing five 2 GHz PCS licensees 20 MHz assignments in the existing MSA and RSA markets. Moreover, PCS licensees should be selected using competitive bidding procedures -- the optimum licensing method for preventing speculation, reducing administrative overhead and assuring that bona fide service implementers obtain authorization with the shortest delays and minimum wasted expenses.

Accordingly, the Commission should issue a Further Notice of Proposed Rulemaking setting forth this regulatory structure, establishing a national interconnection right for PCS and all other wireless communications providers, permitting PCS licensees to

choose the most appropriate regulatory status for services under that license, and addressing the other issues discussed herein. At the same time, the Commission should expeditiously pursue legislation granting PCS auction authority.

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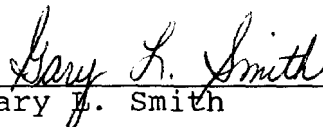
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